

Committee on Resources

Subcommittee on Forests & Forest Health

Testimony of Robert Joslin

STATEMENT OF
ROBERT JOSLIN, DEPUTY CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Committee on Resources
Subcommittee on Forests and Forest Health
United States House of Representatives
March 24, 1998

Concerning:

H.R. 1021, to provide for a land exchange on the Routt National Forest, Colorado;
H.R. 2886, to provide for a demonstration project on the Stanislaus National Forest, California;
H.R. 3381, to direct the Secretary of Agriculture to exchange lands and Assets with Big Sky Lumber;
H.R. 3467, to address the protection of the California spotted owl.

MADAM CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to appear before you today to discuss a number of bills being considered by the Subcommittee. I am Bob Joslin, Deputy Chief for National Forest System and I am accompanied by Eleanor Towns, the Director of Lands. I will address the bills in the order in which they were introduced.

H.R. 1021, To provide for a land exchange on the Routt National Forest, Colorado

H.R. 1021 would facilitate a land exchange on the Routt National Forest by providing for a boundary adjustment in order to allow for a future administrative land exchange, not provide for the exchange itself. The Administration supports the bill.

Modification of the boundary would allow the agency to undertake the administrative land exchange, consistent with all applicable laws, that is desirable to both Marjorie Miles and the Forest Service. The exchange was proposed by Ms. Miles to respond to a situation where her private inholding has created a private/public property line that is complex and expensive for both parties to manage.

Ms. Miles owns the inholding and occupies the adjacent National Forest System parcels proposed for exchange under a special use pasture permit. Subsequent to enactment, the pasture lands would be conveyed to Ms. Miles in exchange for a contiguous piece of property that includes valuable riparian resources and is currently outside the forest boundary.

This exchange will reduce the amount of fence that the Forest Service and Ms. Miles must maintain, eliminate the need for a special use permit, eliminate the need for drift fences, and eliminate the need to authorize a ditch across public lands while improving landline management and adding riparian acreage to the public estate.

H.R. 2886, To provide for a demonstration project on the Stanislaus National Forest, California

H.R. 2886 allows the Secretary to contract with a single source to implement the Granite Watershed Enhancement Project. The Administration supports the Granite Project and would like to offer a technical amendment to H.R. 2886 to assure that the authority needed to most efficiently deliver the intended program of work is provided in the bill.

H.R. 2886 provides support to the Granite Watershed Enhancement Project which is a unique partnership to restore a fire-damaged ecosystem and reduce the future risk of fire. The Project is a part of the CALFED Bay-Delta program, designed to improve the San Francisco Bay and its related delta areas. The Tuolumne River flows into the bay and the watershed has a history of significant wildland fires, the latest being the Rogge and Ackerson fires of 1996. Historical restoration efforts following fires have included reforestation and there have been significant public investments in the watershed.

The collaborative planning efforts for the Project have drawn a broad array of partners together including county and state governments, the City of San Francisco, irrigation districts, environmental groups, industry groups and the scientific and academic communities. Partnership commitments have been made to further Project planning and implementation including additional funding resources, comparable work on adjacent private property, and intensive and comprehensive scientific and academic monitoring assistance both on- and off-site.

The Granite Project calls for multiple resource monitoring, timber stand thinning, riparian restoration, meadow revegetation, road maintenance, and road obliteration to protect watershed values and reduce wildfire hazards. These efforts are designed to protect the project area from large wildfire, restore hydrologic function in meadows and streams, and to reduce stream sedimentation. Long term monitoring is a critical component of the project and will include water quality, habitat quality, and critical species population monitoring.

The Administration has been working with partners to deliver the project within existing authorities. We believe that the Project could be delivered more efficiently if additional authority is provided to allow the Secretary to enter into a contract that provides for the exchange of goods for services. This additional authority is reflected in the proposed technical amendment provided as Supplemental Statement A to my testimony. The value of the products that would be exchanged for services does not exceed \$200,000, or zero for pay-as-you-go purposes. The bill, with our modification, improves the opportunity to leverage Federal funds through partnerships and provides a more timely and cost effective response to the specific forest health situation in Granite Creek.

H.R. 3381, To direct the Secretary of Agriculture to exchange lands and assets with Big Sky Lumber

The Administration supports the objectives of H.R. 3381, a bill to direct the Secretary of Agriculture to exchange lands and Assets with Big Sky Lumber Co. that will allow consolidation of lands and other interests in the Gallatin National Forest, Montana. We, however, cannot support the bill as introduced because of the language waiving applicable Federal laws for the land exchange components of the conveyance and the prohibition of judicial remedies to the public after timber harvest rights are granted.

Significant public involvement, including ten public meetings, and analysis has been completed and documented in the "Report to the Montana Congressional Delegation on the Proposed Gallatin Land Consolidation between USDA Forest Service, USDI Bureau of Land Management, and Big Sky Lumber Co., in Montana" that was provided to the delegation in September 1997. This report discusses the proposed conveyance along with its potential effects on natural resources, recreation, public access, and local economics.

We also have a number of technical concerns with the legislation as drafted. These are addressed in the attached Supplemental Statement B. Among our concerns is the inclusion of the "Option Agreement." The Option Agreement that is incorporated in the bill reflects Big Sky's offer to the United States Government

but does not reflect the Government's response. At this time some provisions of the Option Agreement are unacceptable to the Secretary. We would propose that the bill be rewritten to reflect a negotiated agreement that should be signed prior to any bill becoming law. The negotiated agreement is required to assure Administration support once the public involvement concerns are addressed.

H.R. 3381 provides for the full implementation of the Gallatin Range Consolidation and Protection Act of 1993 by authorizing the exchange of Federal and private land and mineral interests to enhance land management capabilities, recreational opportunities, and environmental and wildlife protection. The 1993 Act directed the Secretary to acquire by purchase or exchange certain, primarily checkerboard railroad grant, lands owned by Big Sky in the Gallatin Range,, Porcupine area, Taylor Fork area and Bridger Mountains within the Gallatin National Forest,

H.R. 3381 employs three distinct methods of land acquisition to accomplish its overall goal. *First*, there is a land-for-land exchange component between the Forest Service and Big Sky for which approximately 29,000 acres of Federal land would be offered. *Second*, there is a purchase component, whereby the Forest Service will acquire up to \$6.5 million of Big Sky lands utilizing appropriated Land and Water Conservation and other funds. *Third*, there is a timber-for-land component whereby the Forest Service would grant up to 20 million board feet of Federal timber harvest rights to Big Sky and acquire an equal value share of the Big Sky lands in return. The timber values that may be granted amount to approximately \$3.4 million. OMB advises that this bill would have a pay-as-you-go score of this amount net the value of resources on the lands to be acquired. Resource value appraisals are still underway and shall be completed prior to completion of the negotiated agreement.

Approximately 36,800 acres of land in the Taylor Fork, Gallatin Range and Bridger Mountains identified in the 1993 Act still remain to be acquired. In addition to these lands, H.R. 3'81 provides for the acquisition of approximately 17,000 acres lands in the Buck Ridge, Spanish Peaks, Bridgers, Bangtail and Tobacco Roots areas that also include significant wildlife habitats and wetlands, productive lands for future multiple use management and a broad spectrum of recreation opportunities. Upon full implementation of this Act, a total of approximately 9 1,000 acres of public ownership within the Gallatin National Forest will have been consolidated. It is important to note that the Rocky Mountain Elk Foundation and Montana Fish, Wildlife and Parks Department have been key partners, along with Big Sky, in these consolidation efforts.

Much of the land being acquired is within the Greater Yellowstone Grizzly Bear Recovery Zone. These lands contain resident grizzly bear populations and habitat components of over I 1,000 acres and are considered essential for the recovery of grizzly bear. These lands also provide important habitat for elk, moose and mule deer which migrate from Yellowstone National Park. The consolidation of these lands would also enhance the conservation efforts to restore Westslope Cutthroat Trout within the Gallatin

River drainage and improve conservation of the Yellowstone Cutthroat Trout populations in the Bridger and Bangtail Mountains and Gallatin Range. Recreation opportunities, like hunting and fishing, hiking, camping, and backpacking are enhanced by improved access to bigger blocks of National Forest System lands.

The Administration appreciates the efforts of the delegation in support of this conveyance. We would like to work with Congressman Hill, the rest of the Montana delegation, and the Committee to facilitate this land exchange while assuring that the public is involved in the decision making process.

H.R. 3467, a bill to address protection of the California Spotted Owl

H.R. 3467 directs the Secretary of Agriculture to modify the Revised Draft Environmental Impact Statement Managing California Spotted Owl Habitat in the Sierra Nevada National Forests of California (RDEIS) within 6 months of enactment and utilize the preferred alternative as interim direction in the Sierra Nevada National Forests for one year, within which the final EIS is directed to be completed.

Because H.R. 3467 was only recently introduced, the Administration has had insufficient opportunity to complete a thorough review of the bill. Nonetheless, based on a preliminary review, the Administration strongly opposes H.R. 3467.

We believe that we share with the Congressman a common goal - to assure a sustainable level of multiple uses from the national forest lands while assuring their long-term productivity and health. We have initiated what we believe will provide a scientifically sound approach to interim and long-range management of the Sierra Nevada. The Regional Forester and the Director of the Pacific Southwest Research Station are working together with a broad array of partners including other federal agencies, state agencies, tribes and interest groups to address issues of concerns.

To address the interim management concerns raised by the Advisory Committee and identified in H.R. 3467, and to ensure that short-term activities do not preclude future management options, the Regional Forester is considering an immediate letter of instruction to national forests in the Sierra advising them how to proceed with the project planning and implementation in FY98 and FY99.

In response to the Committee Report and to ensure that we keep all the options open the Regional Forester and the Research Station Director are identifying teams of scientists and resource specialists to evaluate the effects of the current management direction on areas of resource concern noted in The Final Report of the California Spotted Owl Federal Advisory Committee. By early summer 1998, based on the findings of the science teams and input from partners, the Regional Forester will move forward with a proposal for needed changes to the current interim direction.

H.R. 3467 would require the Forest Service to adopt an EIS which, after careful scrutiny, has deficiencies which will require more than six months to correct. These deficiencies were identified by a Federal Advisory Committee Act panel convened by the Secretary to review the RDEIS. The Committee provided its final report to the Secretary in December, 1997.

The Advisory Committee report identified certain deficiencies in the RDEIS analysis. In addition to needing more fire hazard analysis, as noted in H.R. 3467, the Advisory Committee made specific recommendations for additional actions the Forest Service should take. Some examples of those recommendations include:

- Address several significant issues related to owl biology and ecology.

- Provide objectively defined evaluations of species viability, including furbearers.

- Recalculate potential sale quantity based on implementation of the aquatic/riparian management component.

The Advisory Committee further recommended that the Forest Service prepare for upcoming revisions of forest plans by establishing a collaborative planning process to develop a long-range strategy. In making its recommendation, the Advisory Committee noted that it is unlikely that the long-range strategy could be achieved by modifying the RDEIS.

CLOSING

In summary, Madam Chairman, the Administration supports H.R. 102 1, To provide for a land exchange on the Routt National Forest, Colorado; supports H.R. 2886, To provide for a demonstration project on the Stanislaus National Forest, California, and offer an amendment; supports the intent of H.R. 33 8 1, To direct the Secretary of Agriculture to exchange lands and assets with Big Sky Lumber but cannot support the bill because of language exempting the exchange and the related grant of timber harvest rights from public involvement processes; and strongly opposes H.R. 3467, a bill to protect the California Spotted Owl.

This concludes my statement. I would be very happy to answer any questions you might have.

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SUPPLEMENTAL STATEMENT A

U.S. DEPARTMENT OF AGRICULTURE
March 24, 1998
for the Subcommittee on Forests and Forest Health
House Committee on Resources

Proposed Amendatory Language for H.R. 2886
A bill to provide for a demonstration project on the Stanislaus National Forest

Section 2(d)(1)

Add new subsection (E)

(E) a contract provision allowing the cost of performing authorized management activities described in Section 2(b) to be offset by the values owed to the United States for any forest products removed by the contractor.

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Supplemental Statement B

SUPPLEMENTAL STATEMENT B

U.S. DEPARTMENT OF AGRICULTURE
March 24, 1998
for the Committee on Resource and
Subcommittee on Forests and Forest Health
Proposed Amendatory Language for H.R. 3381
A bill to direct the Secretary of Agriculture and the Secretary of Interior to exchange land and other assets
with Big Sky lumber Co.

105TH CONGRESS

2D SESSION H. R. 3381

To direct the Secretary of Agriculture and the Secretary of the Interior to exchange land and
other assets with Big Sky Lumber Co.

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 1998

Mr. HILL introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To direct the Secretary of Agriculture and the Secretary of the Interior to exchange land and other assets with Big Sky Lumber Co.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE.

This Act may be cited as the "Gallatin Land Consolidation Act of 1998".

SEC. 2. FINDINGS.

Congress finds that-

(1) the land north of Yellowstone National Park possesses outstanding natural characteristics and wildlife habitats that make the land a valuable addition to the National Forest System;

(2) it is in the interest of the United States to establish a logical and effective ownership pattern for the Gallatin National Forest, reducing long-term costs for taxpayers and increasing and improving public access to the forest; and

(3) *the interest of the United States is best served by entering into an agreement between the Secretary of Agriculture and Big Sky Lumber Co. that specifies the conditions of the exchange and the interests being conveyed for the purposes of this Act.*

SEC. 3. DEFINITIONS.

In this Act:

(1) *BLM LAND.* The term "BLM land" means approximately 3,000 acres of Bureau of Land Management land (including all appurtenances to the land) that is proposed to be acquired by BSL, as identified in the Agreement defined in (5). (2) *BSL.*- The term "BSL" means Big Sky Lumber Co., an Oregon joint venture, and its successors and assigns, and any other entities having a property interest in the BSL land. (3) *BSL LAND.*- The term "BSL land" means approximately 55,000 acres of land (including all appurtenances to the land) owned by BSL that is proposed to be acquired by the Secretary of Agriculture, as identified in the Agreement defined in (5) (4) *NATIONAL FOREST SYSTEM LAND.* The term "National Forest System land" means approximately 29,000 acres of land (including all appurtenances to the land) owned by the United States in the Gallatin National Forest, Flathead National Forest, Deer Lodge National Forest, Lolo National Forest, and Lewis and Clark National Forest that is proposed to be acquired by BSL, as identified in the Agreement defined in (5)

(5) *AGREEMENT.* The term "agreement" means the negotiated agreement between the Secretary of Agriculture and BSL, dated that documents the terms and conditions of the conveyances to be completed, including land for land, land for timber, and land for cash transactions as well as any agreed upon grants and reservations of rights or property.

SEC. 4. GALLATIN LAND CONSOLIDATION COMPLETION.

Subject to the terms and conditions of the Agreement, and in accordance with subsection (e) -

if BSL offers title acceptable to the Secretary to certain BSL land, and places acceptable title to remaining lands in escrow pending the harvest of conveyed timber rights; (1) the Secretary of Agriculture shall accept a warranty deed to the offered BSL land not held in escrow and a quit claim deed to agreed to mineral interests in the BSL land;

(2) the Secretary of Agriculture shall convey to BSL, subject to valid existing rights and to such other terms, conditions, reservations, and exceptions as may be agreed on by the Secretary of Agriculture and BSL fee title to the agreed to National Forest System land;

@ (4)(A) the Secretary shall grant to BSL in accordance with subsection (c) timber harvest rights to approximately 20,000,000 board feet of timber for the title to lands held in escrow

as described in the Agreement;

(B) BSL will release, on a pro-rata basis to the United States, title to the lands held in escrow, as timber volume is cut and removed and

(3)(A) subject to the availability of funds, the Secretary of Agriculture shall purchase the agreed to portions of the BSL land in the Taylor Fork area at a purchase price of not more than \$6,500,000; and

(B) to extent that funds are not available, the Secretary of Agriculture shall acquire the remaining Taylor Fork sections through an exchange of assets;

(5) the Secretary of the Interior shall convey to BSL, by patent or otherwise, subject to valid existing rights and to such other terms, conditions, reservations, and exceptions as may be agreed to by the

Secretary of the Interior and BSL, fee title to the BLM land described in the Agreement.

(b) VALUATION. The property and other assets exchanged or conveyed by BSL and the United States under subsection (a) shall be approximately equal in value, as determined by the Secretary of Agriculture.

(c) TIMBER HARVEST RIGHTS.

(1) IN GENERAL. Not later than December 31 of the second full calendar year that begins after the date of enactment of this Act, the Secretary shall prepare, grant to BSL, and commence administration of the timber harvest rights identified in the Agreement.

(2) GRANTS. 14

(A) IN GENERAL. The Secretary shall grant timber harvest rights to BSL not earlier than the date that is 45 days after the date on which the Secretary issues a decision notice to grant the timber harvest rights, or, if such a decision notice is appealed, after the date of final resolution of the appeal.

(B) LIMITATION. The Secretary may not grant timber harvest rights that are the subject of administrative appeal or litigation.

(4) SCHEDULES. The Secretary and BSL shall mutually develop and agree on schedules for the harvest of timber granted as the timber harvest rights to BSL in the exchange.

(5) TIMBER SALE PROGRAM. The timber harvest rights granted under this Act (A) shall constitute the timber sale program for the Gallatin National Forest for the period beginning on the date of enactment of this Act and ending on December 31 of the second full calendar year that begins after that date; and

(B) shall be funded by the Secretary annually at levels that are commensurate with the preparation and administration involved in the program.

(C) PAYMENTS TO COUNTIES - Payments to counties pursuant to the Acts of May 23, 1908 and March 1, 1911 (16 U.S. C. 500) will not be made for the value of the timber harvest rights conveyed to BSL. (6) SUBSTITUTION. If the Secretary determines circumstances, such as natural catastrophe, administrative appeals or litigation, regulatory or legal limitations, or environmental or financial circumstances, prevent the Secretary from granting the timber harvest rights identified the Agreement, the Secretary may, with the concurrence of BSL replace the equivalent value of the diminished timber harvest rights by substituting

(A) timber harvest rights volume from the same market area as described in the agreement

(B) purchasing title to BSL lands held in escrow

(C) Gallatin National Forest lands as identified in the agreement.

(7) OPEN MARKET. All timber harvest rights granted to BSL in the exchange under this Act shall be offered for sale by BSL through the competitive bid process.

(8) SMALL BUSINESS.- All timber harvest rights granted to BSL in the exchange shall be subject to compliance by BSL with Forest Service small business program procedures in effect as of the date of enactment of this Act, including contractual provisions for payment schedules, harvest schedules, and bonds and including the right of the highest bidder among qualified small businesses that submit minimum bids to be awarded a timber contract.

(d) RIGHTS-OF-WAY. Subject to the terms and conditions of subsection (a)

(1) the Secretary of Agriculture, under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), shall grant to BSL such easements in or other rights-of-way as may be agreed to by the Secretary of Agriculture and BSL;

(e) QUALITY OF TITLE.

(1) DETERMINATION. The Secretary of Agriculture shall review the title for the BSL land described in subsection (a) and, within 60 days after receipt of all applicable title documents from BSL, determine whether

(A) the applicable title standards for Federal land acquisition have been satisfied or the quality of the title is otherwise acceptable to the Secretary of Agriculture;

(B) all draft conveyances and closing documents have been received and approved;

(C) a current title commitment verifying compliance with applicable title standards has been issued to the Secretary; and

(D) the title includes both the surface and subsurface estates without reservation except as identified in the Agreement or exception including

(i) minerals, mineral rights, and mineral interests (including severed oil and gas surface rights), subject to and excepting other outstanding or reserved oil and gas rights;

(ii) timber, timber rights, and timber interests, except those reserved subject to section 251.14 of title 36, Code of Federal Regulations, by BSL and agreed to by the Secretary;

(iii) water, water rights, ditch, and ditch rights; and

(iv) any other interest in the property.

(2) CONVEYANCE OF TITLE.

(A) IN GENERAL.- If the quality of title does not meet Federal standards or is otherwise determined to be unacceptable to the Secretary of Agriculture, the Secretary shall advise BSL regarding corrective actions necessary to make an affirmative determination under paragraph (1)

(B) TITLE TO SUBSURFACE ESTATE.- Title to the subsurface estate shall be conveyed by BSL to the Secretary of Agriculture in the same form and content as that estate is received by BSL from Burlington Resources Oil & Gas Company Inc. and Glacier Park Company.

(f) TIMING OF IMPLEMENTATION.-

(1) LAND-FOR-LAND EXCHANGE.- If the Secretary makes an affirmative determination of title with respect to the BSL land, the Secretary of Agriculture shall accept the conveyance of land described in subsection (a) not later than 45 days after should the Secretary of Agriculture make an affirmative determination of quality of title.

(2) LAND-FOR-TIMBER EXCHANGE.- The Secretary shall make the timber harvest rights described in subsection (a)(3) available not later than December 31 of the second full calendar year that begins after the date of enactment of this Act.

(3) PURCHASE.- If the Secretary of Agriculture makes an affirmative determination of quality of title with respect to the BSL land, the Secretary shall complete the purchase of BSL land under subsection (a)(4) not later than 30 days after the date on which appropriated funds are made available and an affirmative determination of quality of title is made with respect to the BSL land.

SEC. 5. GENERAL PROVISIONS.

(a) MINOR CORRECTIONS.-

(1) IN GENERAL.- The Agreement shall be subject to such minor corrections as may be agreed to by the Secretary of Agriculture and BSL.

(2) NOTIFICATION.- The Secretary shall notify the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and each member of the Montana congressional delegation of any changes made pursuant to this subsection.

(3) BOUNDARY ADJUSTMENT.- The boundary of the Gallatin National Forest shall be adjusted in Wineglass and North Bridgers areas as described on Boundary Adjustment maps dated March 4, 1998 upon completion of the agreed to conveyances.

(b) PUBLIC AVAILABILITY.- The Agreement-

(1) shall be on file and available for public inspection in the office of the Supervisor of the Gallatin National Forest; and

(2) shall be filed with the county clerk of each of Gallatin County, Park County, Madison County, Granite County, Broadwater County, Meagher County, Flathead County, and Missoula County, Montana. 24

(c) STATUS OF LAND.- All land conveyed to the United States under this Act shall be added to and administered as part of the Gallatin National Forest and Deerlodge National Forest, as appropriate, in accordance with the Act of March 1, 1911 (commonly known as the "Weeks Act") (36 Stat. 961, chapter 186), and other laws (including regulations) pertaining to the National Forest System.

(d) MANAGEMENT.-

(1) PUBLIC PROCESS.- Not later than 30 days after the date of completion of the transaction provided for in this Act, the Secretary shall initiate a public process to amend the Gallatin National Forest Plan and the Deerlodge National Forest Plan to integrate the acquired BSL land into the plans.

(4) INTERIM MANAGEMENT.- Pending completion of the forest plan amendment process under paragraph (1), the Secretary shall-

(A) manage the acquired BSL land under the same standards, guidelines, and management directions as adjacent land managed by the Forest Service; and

(B) maintain all existing road and trail access as identified on the Gallatin National Forest West Half Map dated 1996 to the acquired BSL land.

(e) RESTORATION.

(1) IN GENERAL. After acquiring the BSL land, the Secretary shall initiate a restoration program including reforestation and watershed enhancements to bring the BSL land and surrounding national forest land into compliance with Forest Service standards and guidelines. 1

(2) STATE AND LOCAL CONSERVATION CORPS.- In implementing the restoration program, the Secretary shall, when practicable, use partnerships with State and local conservation corps, including the Montana Conservation Corps, under the Public Lands Corps Act of 1993 (16 U.S.C. 1721 et 22 seq.). (f) IMPLEMENTATION.- The Secretary of Agriculture shall ensure that sufficient funds are made available to the Gallatin National Forest to carry out this Act. SEC. 6. AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated such sums as are necessary to carry out this Act.

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